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Fred Williams
327 Congress Ave.
Suite 490
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Via Email: fwilliams@wsltrial.com

RE: *Salazar v. AT&T et al.*, Civil Action No. 2:20-cv-4

Dear Mr. Williams:

We write pursuant to Paragraph 9 of the Discovery Order to address deficiencies with respect to the sales records produced by Defendants AT&T, Verizon, and Sprint (collectively, “Defendants”). For the reasons discussed below, Defendants’ records for the Accused Devices contain insufficiently defined terms, numerous discrepancies, and appear to be incomplete and inconsistent in many respects.

1. AT&T’s Sales Records

AT&T’s records raise several problems. First, the records do not identify the products by their product names—HTC One M7, M8, and M9 phones. For example, rather than specifying the model numbers, the sales records include designations such as “HTA” phones (and “row labels” indicating “HTA One,” “HTA New,” and “HTC New”) and “HIMA#UL_ATT-T13” and employ eleven different “labels” starting with 6022A. There is no explanation as to which—if any—of these phones are the M7, M8, or M9 phones, and, if they are, which specific model they are. Because these designations are unclear, AT&T needs to provide the sales records using the correct M7, M8, and M9 product names or, at least, with a key provided.

Additionally, AT&T’s sales records do not seem to be a full accounting of the company’s phone sales. For example, according to HTC’s sales spreadsheet (HTC036724), in the period from 3/28/2013 through 12/28/2013, the total net sales made by HTC to AT&T were 545,362. However, the number of phones sold by AT&T to its customers is significantly (and proportionally) lower—i.e., the number of phones sold by AT&T in the period of “2013 Jun-Dec” are shown in ATT000708 as 304,015. To understand this discrepancy, we need (1) AT&T’s sales records for March 1, 2013 through June 1, 2013, (2) all records indicating where

any unsold phones are located and/or how the unsold phones were disposed of, and (3) clarification otherwise of the discrepancies.

2. Verizon's Sales Records

Verizon's sales records are also problematic. The records do not make clear how many units of each of the HTC One M7, M8, and M9 phones were sold during the relevant time period (June 1, 2013 through September 30, 2015). Further, the meanings of the categories of entities in VZN000873-879 are unclear. Does the data reflect sales made by Verizon to each of these categories? Verizon's sales records contain other ambiguities. For example, VRZ000873-879 show each sales category with dates (such as 8/1/2013, 9/1/2013, etc., through 9/1/2015), but it is unclear what this dating means. Does, e.g., "8/1/2013" mean the sales "as of" 8/1/2013 (that is, from 7/1/2013 up until 12:01AM on 8/1/2013)? Or does it mean, all sales starting at 12:01AM on 8/1/2013 up to 11:59PM on 9/1/2013, or something else? Likewise, Verizon needs to clarify the meaning of vague terms such as "Sold_Price_Amt."

Verizon's data also contains discrepancies that need to be explained. For example, it appears that the "sales" as reported in VZN000873-879 may be an underreporting of the sales actually made by Verizon and that the sales reported in VZN000871 are an underreporting of sales of M7 and M8 phones.¹ To understand these discrepancies, we need (1) Verizon's sales records for March 1, 2013 through June 1, 2013, (2) all records indicating where any unsold phones are located and/or how the unsold phones were disposed of, and (3) clarification otherwise of the discrepancies. Additionally, the "prices" shown in VZN000873-879 are much less than those shown as having been paid by Verizon to HTC in HTC036724. This discrepancy also needs further explanation.

3. Sprint's Sales Records

Sprint's sales records require clarification with respect to several issues. First, Sprint's sales records are also unclear as to the precise number of HTC One M7, M8, and M9 phones sold, and the revenues received for such sales from June 1, 2013 through September 30, 2015. Additionally, Sprint's records present sales data with the categories of: "Subscribers: Gross Adds, Deactivations, and Equip Upgrades Qty." It is not clear what these categories mean in terms of sales of the M7, M8, and M9 phones, and, accordingly, we need Sprint to clarify these categories and identify which specific categories constitute sales of the accused phones.


Further, Sprint's sales records contain numerous ambiguous terms that require definition or clarification, including: "Retention" (why is this a category of "Handset Retention?"), "Equipment Upgrades" (does this entail selling a new phone to the customer?), "Adds" (does this

¹ E.g., there is a considerable discrepancy between the 394,645 "sales" reported in VZN000873-879 and the 850,986 sales made by HTC to Verizon. Further, the data in VZN000871 reports total sales of 370,340 "HTC One" phones, 92,605 "HTC One M8 for Windows" phones, and 89,350 "HTC One M9" phones. These collectively amount to a total of 552,315 phones, as compared to the 394,645 reported in VZN000873-879. The total sales of "HTC One" plus "HTC M8 for Windows" is given as 370,360 but the sales of One M7 plus One M8 phones in HTC036724 amount to 753,886 phones.

entail selling new phones to existing customers?), and “Deactivation” (does this mean the number of phones that were “deactivated,” the loss of customers, both, or something else?).

Please let us know when you are available to meet and confer on these matters. Thank you for your prompt attention to this matter.

Kindest regards,



Geoff Culbertson

GPC/jj